

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)

ELCOMSOFT, LTD,)
Plaintiff,)
v.) Case No. 2:13-cv-18-AWA-TEM
PASSCOVERY CO. LTD;)
ACCENTSOFT;)
DENIS GLADISH; and)
IVAN GOLUBEV)
Defendants.)

)

**DECLARATION OF DENIS GLADYSH IN SUPPORT OF MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS**

SAINT PETERSBURG)
RUSSIAN FEDERATION) ss:
)

I, DENIS GLADYSH, pursuant to 28 U.S.C. § 1746(1), declare as follows:

1. I am over twenty-one (21) years of age and am fully competent to make this declaration. The facts stated herein are true and correct and within my personal knowledge.
2. I am the Director General of Passcovery Co. Ltd. ("Passcovery") and I am authorized to speak on its behalf.
3. I am responding to the Complaint filed by Elcomsoft, Ltd. ("Elcomsoft") in Virginia, United States ("U.S.") for the limited purposes of expressing that the Court lacks personal jurisdiction over me and that Virginia is not the proper forum for this action.
4. I am a citizen of the Russian Federation ("Russia").
5. I have never been to the U.S. and I do not transact business in the U.S.

6. I personally do not sell any software in the U.S. and more specifically have never sold any software or transacted any business in Virginia.

7. Passcovery is a limited liability company established under the laws of Russia.

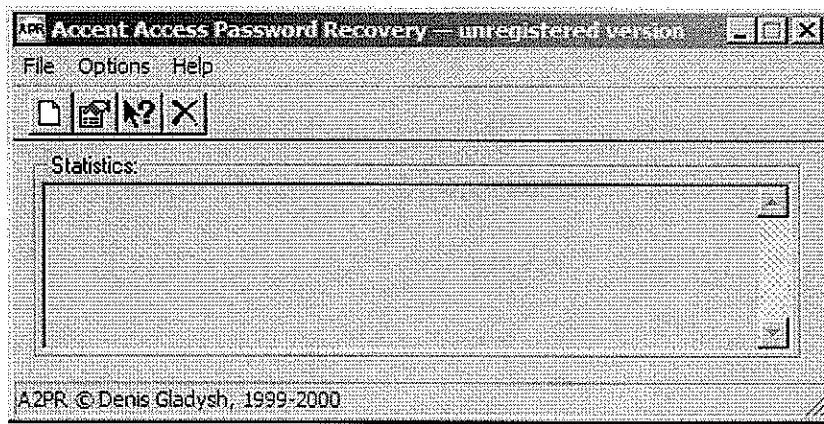
8. Passcovery uses the name AccentSoft.

9. The name AccentSoft has been used to sell password recovery software since at least as early as 1999.

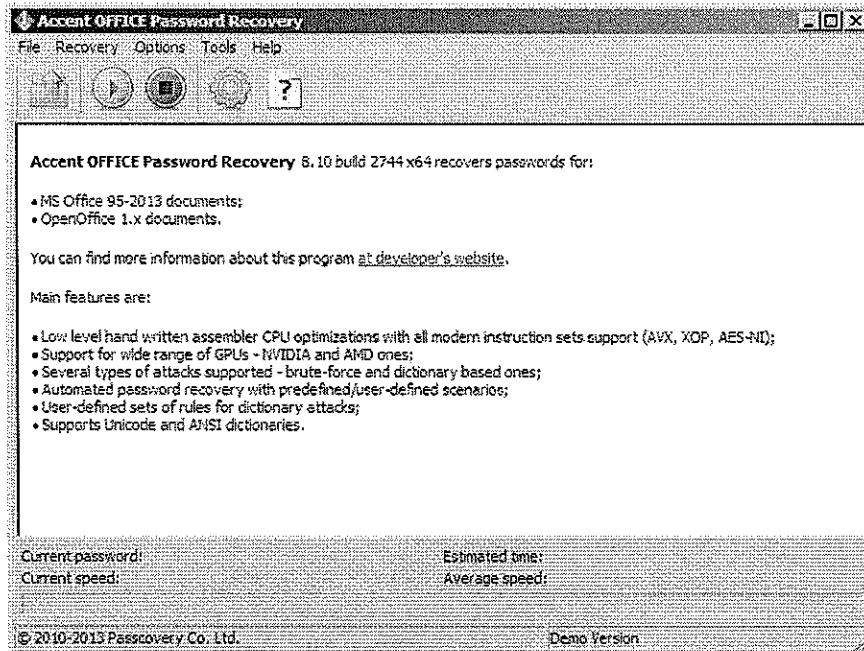
10. Since 1999, I have owned all the rights in Accent Access Password Recovery (“A2PR”); Accent Windows Manager (“AWM”); Accent Money Password Recovery (“AMPR”); Accent Word Password Recovery (“AWRDPR”), and derivatives thereof.

11. I have been selling Central Processing Unit (“CPU”) enabled and Single Instruction Multiple Data (“SIMD”) (Pentium MMX/SSE) optimized Password Recovery Software under the Accent brand for years before the applications for U.S. Pat. Nos. 7,787,629 and 7,929,707 (collectively the “Patents in Suit”), the accusations of the Plaintiff, and long before Ivan Golubev stopped his relationship with Elcomsoft and licensed his software to Passcovery.

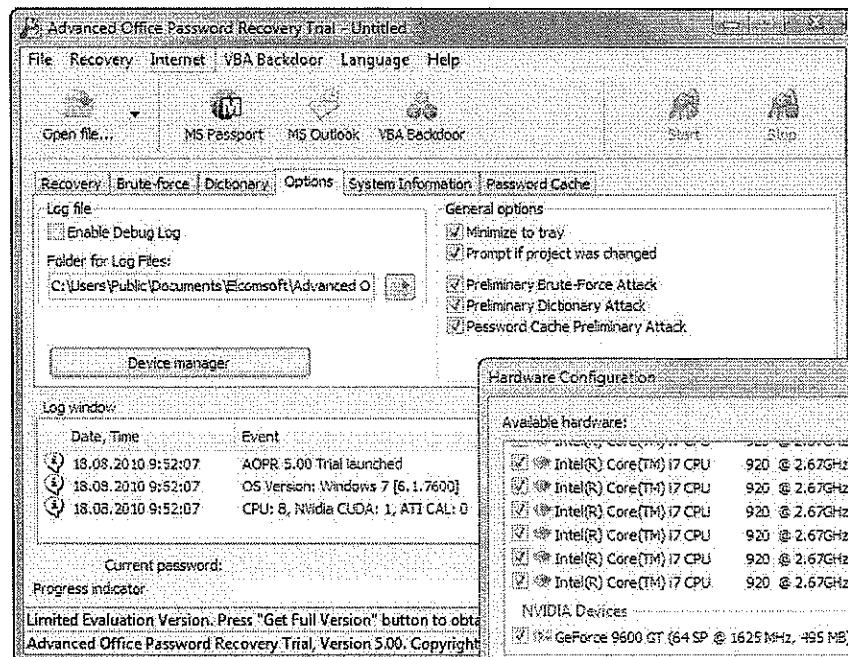
12. An example screenshot from an early version of A2PR appears below:



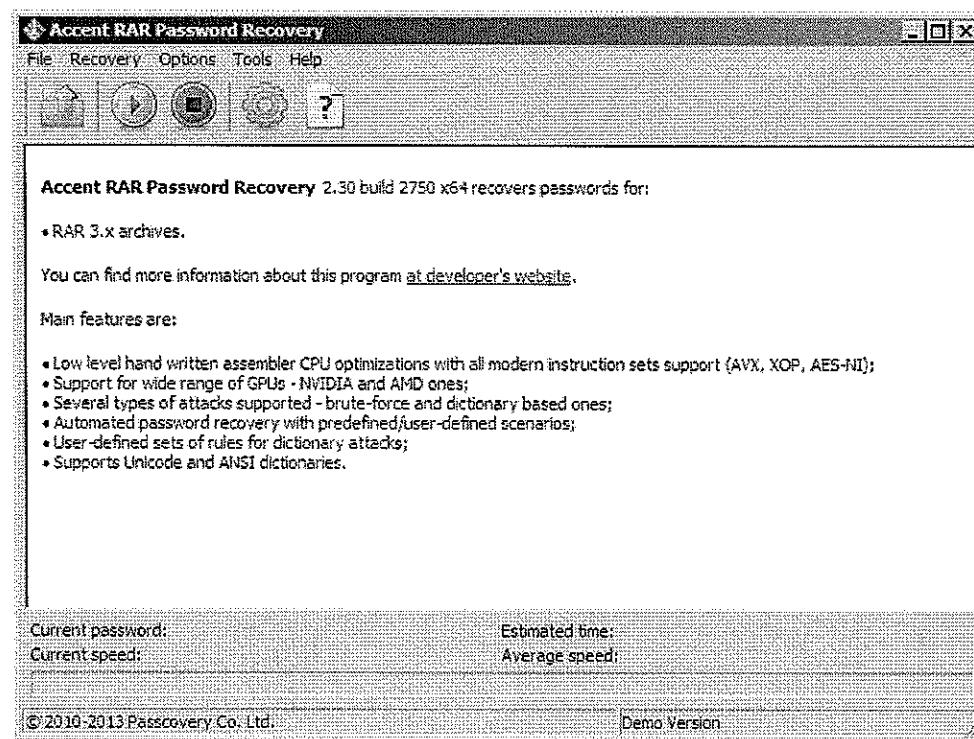
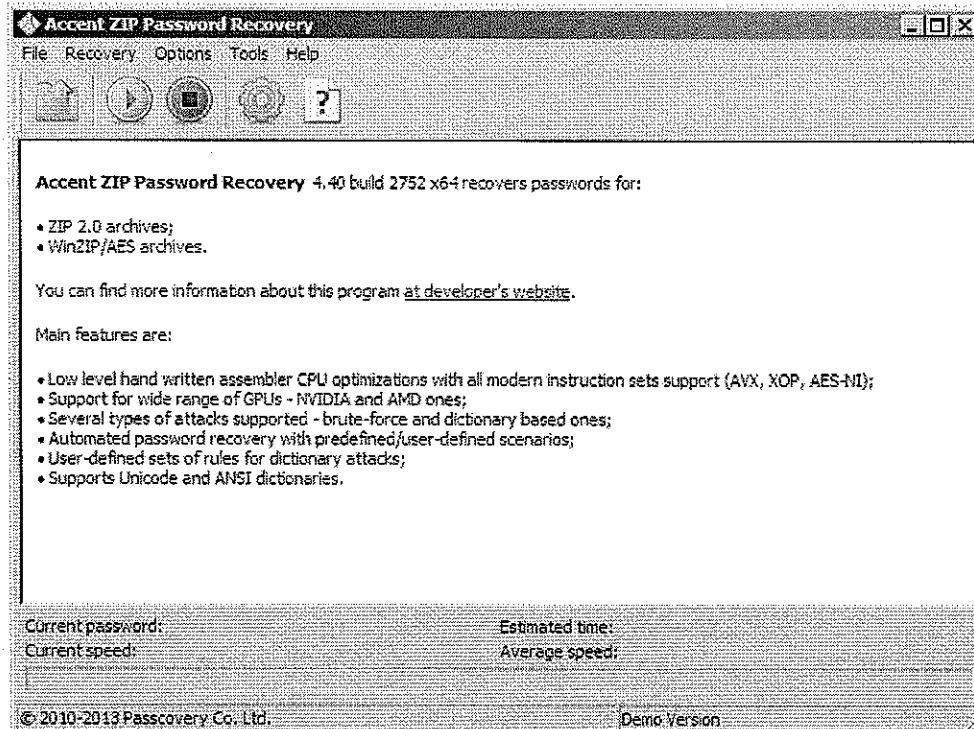
13. A screenshot from the most recent version of Accentsoft's simple Office Password Recovery with GPU processing available for non-U.S. residents appears below.



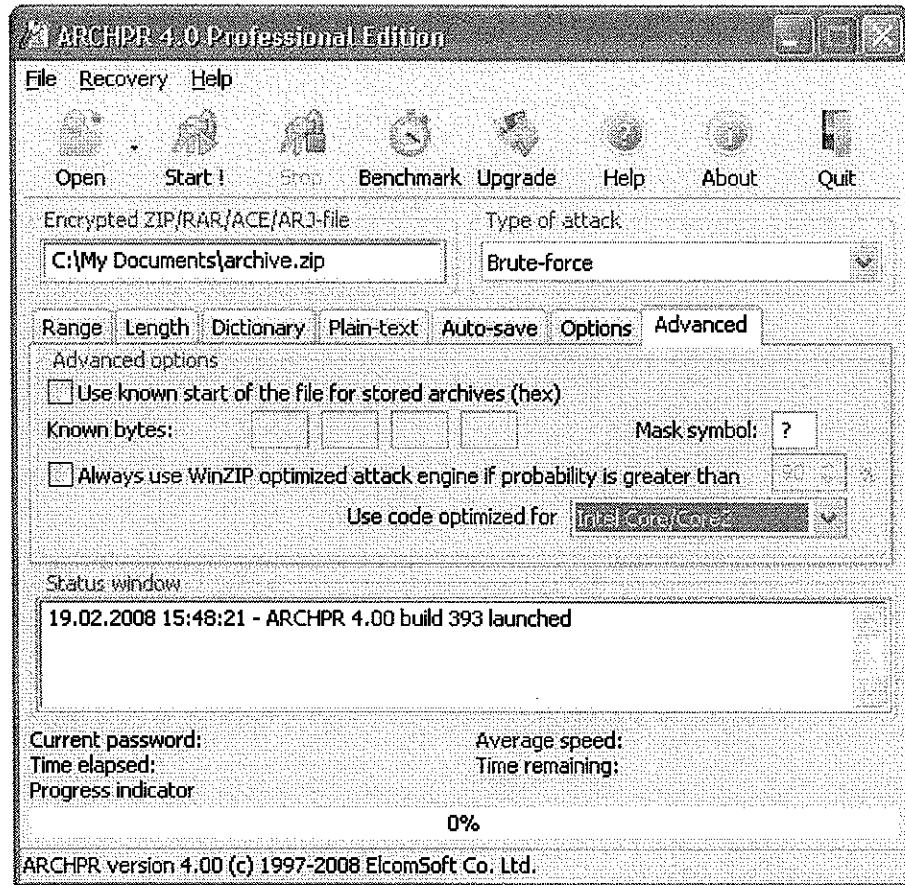
14. This strongly contrasts with Elcomsoft's overly complicated Advanced Office Password Recovery, which is pictured below.



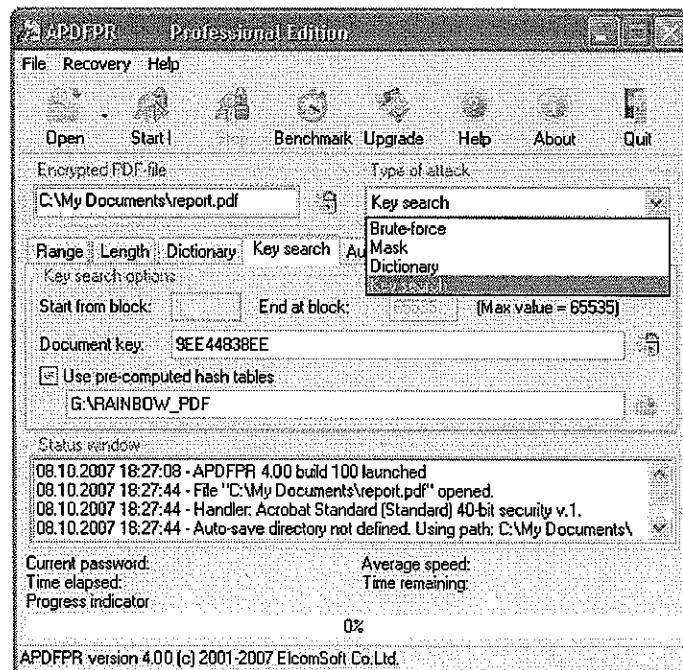
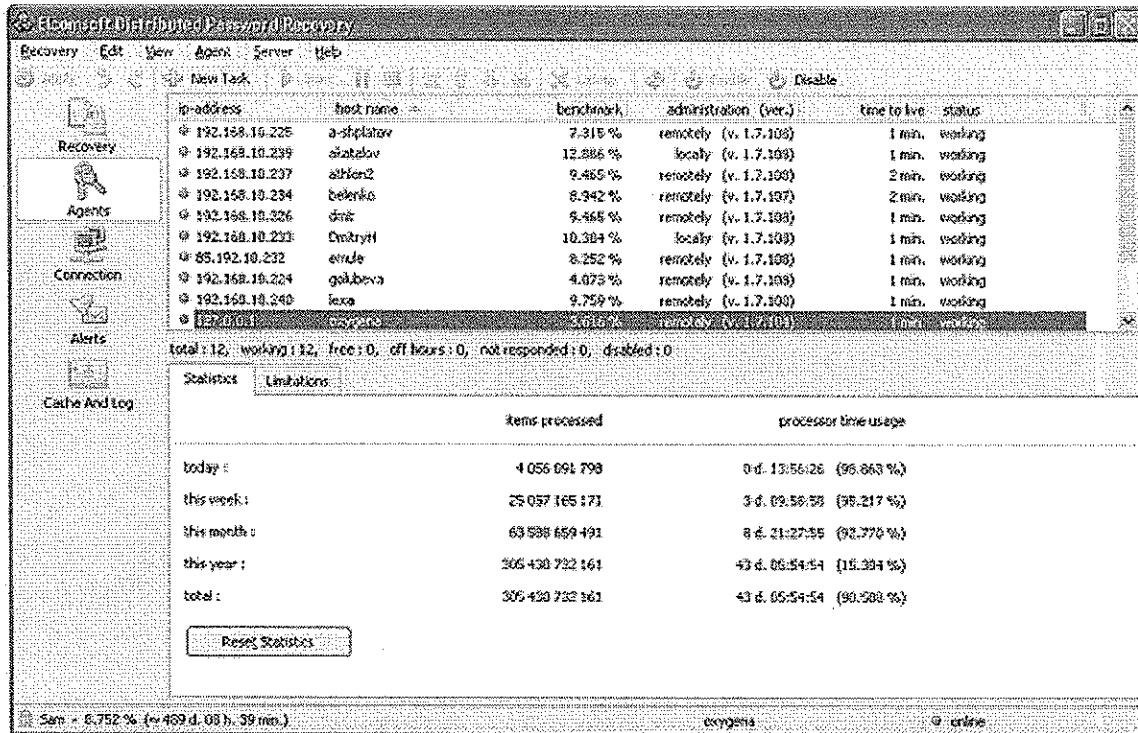
15. Accentsoft's simple Accent ZIP Password Recovery and Accent RAR Password Recovery are pictured below.



16. Whereas, Elcomsoft's combined (ZIP/RAR) and complicated Advanced Archive Password Recovery is pictured below.



17. There currently is no software offered by me, Passcovery or otherwise under the accused Accentsoft brand that offers similar functionality to Elcomsoft's Distributed Password Recovery or Advanced PDF Password Recovery, both pictured below.



18. Accentsoft password recovery utilities are simple to use. The user provides a target file and Accentsoft recovers the password. Accentsoft is not hindered by the cluttered interface and poor design of Elcomsoft's products. Functionally, Accentsoft is much faster and user friendly than Elcomsoft.

19. Besides the attorney we hired to respond to the instant Complaint, neither I nor Passcovery have any offices, employees, or agents in Virginia.

20. Neither I, nor Passcovery, have ever directly sold any software in Virginia.

21. Neither I, nor Passcovery, have transacted any business in Virginia.

22. It should be noted that I have three resellers (collectively the "Resellers") which resell my software, namely:

- a. Digital River, Inc. ("RegNow") has offices in Moscow Russian and has resold my software since 2001;
- b. PayPro Global, Inc. ("PayPro") has offices in Toronto Canada and has resold my software since May 24, 2010; and,
- c. Avangate BV ("Avangate") has offices in the Netherlands and has resold my software since August 14, 2009.

23. I am a member of the Independent Software Developers Forum (a/k/a "Форум независимых разработчиков программного обеспечения") ("ISDEF"). Based upon ISDEF's registration records, ISDEF is headquartered at: Leninsky pr-t 72/2, pod-ezd 1, Moscow, Russia 119261.

24. One of the benefits of maintaining my ISDEF membership and paying my ISDEF dues is consultations with ISDEF's retained legal, economic and technical experts for its members. Dmitri Dubograev is on the board of directors for ISDEF and as a benefit of ISDEF

membership, Dubograev provides legal advice and counsel to all members of ISDEF regarding intellectual property matters. *See* Composite Exhibit 1.

25. Dubograev is also the managing member of Int'l Legal Counsels (a/k/a femida.us) which is astonishingly the law firm representing Plaintiff Elcomsoft in this matter. *See* Exhibit 2.

26. Prior to Elcomsoft initiating this action, as a member of the ISDEF I enquired to the ISDEF about my rights and obligations regarding Elcomsoft's allegations. A member of the ISDEF recommended that we arbitrate this matter in Russia through the ISDEF arbitration court.

27. More specifically, Dubograev is the court administrator to the ISDEF arbitration court.

28. I communicated extensively with Dubograev through the ISDEF regarding this matter in an attempt to resolve the matter with Elcomsoft, but it became apparent Dubograev was not neutral and only represented Elcomsoft's interests.

29. Notably, Dubrograev and Int'l Legal Counsels maintain offices in Michurinski Prospekt 25, kor.3 119607 Moscow, Russia.

30. In Russia, the Resellers solicited me as representative of Passcovery and the Accentsoft brand to buy our software. Some of the Resellers directly solicited me through ISDEF for which they are sponsors or members. I did not meet any of the Resellers in the U.S., nor did I direct any business with the Resellers to the U.S.

31. Notably, one of the non-party Resellers, Avangate, requires any disputes regarding its resale of services or relating to intellectual property be arbitrated exclusively in the Netherlands.

32. Notably, one of the non-party Resellers, Paypro Global, requires exclusive arbitration in Toronto, Ontario, Canada.

33. None of my agreements with any of the Resellers has any connection to the commonwealth of Virginia.

34. After being accused of Elcomsoft of infringement, I enquired of the Resellers if any of the Resellers had ever sold Accentsoft branded software in Virginia.

35. According to the Resellers, at that time (namely, circa Nov.-Dec. 2010), there had only been two prior purchasers who identified themselves as Virginia residents, one on August 7, 2010 which involved a single GPU license for one of the Accused Products described in paragraphs twenty-four through twenty-five of the Complaint [DE ¶¶ 24-25] (collectively the "Accused Products"). That sale was not made by me or Passcovery, but was sold by a one of the Resellers located in Amsterdam, Netherlands for a one time fee of \$45.00. The other sale, on August 4, 2010, was also sold by the same reseller from Amsterdam, Netherlands for \$60.00 and did not involve an Accused Products' GPU license.

36. Notably, the only Virginia Accused Products' GPU license that I am aware of that was alleged to have been sold, was sold by an independent Reseller in Amsterdam, Netherlands on August 4, 2010, almost a month before the first Patent in Suit issued on Aug. 31, 2010. I had no direct control over this Reseller and neither I nor Passcovery did anything to direct the sale. Rather, a user likely contacted the Amsterdam, Netherlands reseller and downloaded the program through the Internet. I have seen no evidence that any Accused Product was actually used in Virginia or even shipped to Virginia.

37. Our license terms require that it is the end user's responsibility to use the software in a lawful manner, and our terms with all of the Resellers do not generally permit us to control how or where any reseller sells our software.

38. After being accused of Elcomsoft of infringement, I enquired of the Resellers if any of the Resellers had ever sold Accentsoft branded software in Virginia. According to the Resellers, at that time circa Nov.-Dec. 2010, there had only been two sales, one of which involved a single GPU license for one of the Accused Products described in paragraphs twenty-four through twenty-five of the Complaint [DE ¶¶ 24-25] (collectively the “Accused Products”) which was resold by the reseller for a one time fee of \$45.00. The other sale was for \$60 and did not involve an Accused Products GPU license.

39. I am aware of no evidence that the single Accused Product was actually used in the U.S. or Virginia.

40. Moreover, although the Accused Products are compatible with Graphics Processing Unit (“GPU”) acceleration, GPU acceleration is not required to use the Accused Products. Each licensee of the Accused Products is licensed to only use the Accused Products in a lawful manner. Thus, even if the single \$45 license reportedly sold by a Reseller to a person in Virginia, was also actually used in Virginia, it could have been used for a non-allegedly-infringing purpose.

41. Notably, the GPU acceleration for that particular product is only available for a small minority of computers containing specific graphics cards (namely, only specific NVIDIA or ATI models), so it is more likely than not if it was used, it was used for a non-allegedly-infringing purpose.¹

42. Nonetheless, due to the lack of commercial demand in the U.S., and to avoid any controversy, immediately upon notice from Elcomsoft, Passcovery told its resellers that they were not licensed to resell any GPU licenses to U.S. addressed persons.

¹ For at least the reasons set forth in Golubev’s declaration filed in support of the Motion to Dismiss I believe U.S. Pat. Nos. 7,787,629 and 7,929,707 are invalid.

43. Neither I nor Passcovery authorized or controlled sales or resales of GPU licenses to anyone in Virginia.

44. Neither I, Passcovery, nor the Resellers did anything to purposefully direct business towards Virginia.

45. Passcovery's website is hosted outside the U.S. in Frankfurt, Germany.

46. Passcovery and I dispute Elcomsoft's alleged U.S. copyrights and allegations of patent infringement. However, Passcovery's website and the Resellers prohibit sales of GPU licenses for the Accused Products to the U.S., by denying said sales to any U.S. address.

47. Neither I nor Passcovery, distribute any source code anywhere in the world.

48. Other than certified deposit copies ordered from the U.S. Library of Congress by Passcovery's counsel solely for purposes of responding to Elcomsoft's Complaint in this action, neither I nor Passcovery have ever possessed any Elcomsoft source code for the allegedly infringed literary works identified in paragraphs thirteen and fourteen of the Complaint [DE 1] ¶¶ 13-14 (collectively the "Allegedly Infringed Works").

49. Neither I nor Passcovery, have made copies of Elcomsoft's Allegedly Infringed Works anywhere in the world. More specifically, Passcovery has not made copies of Elcomsoft's Allegedly Infringed Works in the U.S. Even more specifically, Passcovery, has not made copies of Elcomsoft's Allegedly Infringed Works in Virginia.

50. In Russia, co-defendant Ivan Golubev licenses to distribute the Accused software authored by Golubev and branded by Passcovery wherever it is legal. Mr. Golubev is not an employee of the Russian company Passcovery.

51. I was selling Accentsoft branded password recovery software before licensing the Accused Products from Golubev or otherwise using any programs provided by Golubev.

52. On the Compact Disc ("CD") submitted contemporaneously with this statement, named Composite Exhibit 3, are the following files:

Accent OFFICE Password Recovery

x86 - AccentOPR_810.msi
Obj - AccentOPR_810.msi.pdf

x64 - AccentOPR_x64_810.msi
Obj - AccentOPR_x64_810.msi.pdf

Accent RAR Password Recovery

x86 - AccentRPR_230.msi
Obj - AccentRPR_230.msi.pdf

x64 - AccentRPR_x64_230.msi
Obj - AccentRPR_x64_230.msi.pdf

Accent ZIP Password Recovery

x86 - AccentZPR_440.msi
Obj - AccentZPR_440.msi.pdf

x64 - AccentZPR_x64_440.msi
Obj - AccentZPR_x64_440.msi.pdf

Passcovery Suite

x86 - Passcovery_Suite_210.msi
Obj - Passcovery_Suite_210.msi.pdf

x64 - Passcovery_Suite_210_x64.msi
Obj - Passcovery_Suite_210.msi.pdf

53. The above referenced .msi files are true copies of the Accused Products incorporated by reference in Elcomsoft's complaint as allegedly infringing literary works.

54. Also on the Composite Exhibit 3 CD, and incorporated herein by reference, are genuine Adobe PDF readable versions of each of the above showing the hexadecimal and ASCII object code for each of the accused files. There is simply no similarity between the object code for the Accused Products and the Allegedly Infringed Products.

55. Neither I nor Passcovery have any source code created by Golubev. Golubev performs all of his programming and compiling in Russia and provides Passcovery with only the packaged installer, executable, and related data files.

56. Neither I nor Passcovery have ever practiced the steps of any of the claims of the Patents in Suit in the U.S., much less Virginia.

57. Neither I nor Passcovery have ever, built, used, sold or offered for sale in the U.S., much less Virginia, any system claimed in the Patents in Suit.

58. **Mr. Golubev** is a co-codefendant and accused programmer in this case. Mr. Golubev resides in St. Petersburg Russia and is a necessary witness for this case.

59. **Vladimir Katalov (a/k/a “Volodya” Katalov)** is a necessary witness. Mr. Katalov resides in or near Moscow, Russia. He is the CEO of Elcomsoft and is believed to have knowledge of Elcomsoft’s relationship with Mr. Golubev.

60. **Alexander Katalov (a/k/a “Sasha” Katalov)** is a necessary witness. Alexander Katalov resides in or near Moscow, Russia. He is the former CEO of Elcomsoft and is believed to have knowledge of Elcomsoft’s relationship with Mr. Golubev.

61. **Andrey Belenko**, the alleged inventor of the Patents in Suit resides in or near Moscow, Russia. Mr. Belenko is likely a key witness not only regarding the alleged inventorship, but other factual events relevant to the defense of this case, including Elcomsoft’s inequitable conduct before the U.S. Patent and Trademark Office and the Katalovs’ complicity in Belenko and Elcomsoft’s fraud.

62. My primary language is Russian, as is that of the relevant witnesses above.

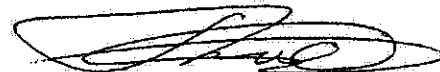
63. Russian law provides for protection against breach of Russian employment agreements, misappropriation of trade secrets, copyright, patent infringement and fraud.

64. Passcovery and I maintain no offices or agents in Virginia.
65. Passcovery and I do not own any property in Virginia.
66. Passcovery and I do not reach into Virginia to solicit or initiate business in Virginia.
67. Passcovery and I have not made any in person contact with any residents of Virginia regarding a business relationship with Elcomsoft or any other business with Virginia residents.
68. Passcovery and I do not communicate about my business in any way that relates to Virginia.
69. Passcovery and I have no contractual duties that have or would occur in Virginia.
70. Passcovery and I are amendable to service of process from and exclusive jurisdiction of the Russian courts.

Pursuant to 28 USC § 1746(1), I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

May 9, 2013

Date Executed



Denis Gladyshev, individually, and as
Director General of Passcovery Co. Ltd.

COMPOSITE EXHIBIT 1

Independent Software Developers Forum (ISDEF)



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	2143
Hosts	862835
	210
Visitors	1394729
	473
	2

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Advantages of membership

A significant proportion of ISDEF members are companies who have been working in the software sector for many years. Over these years they have accumulated considerable experience and numerous contacts. Membership in ISDEF allows them to **exchange valuable expertise** with each other, and also to avoid making the many mistakes made by others.

Specifically, ISDEF gives its members access to:

- a database of "useful contacts" which facilitates the search for partners (for example, regional resellers);
- a "black list" of those active in the market who have acquired an unfavourable reputation;
- a system for protecting members from fraudulent orders for the purposes of credit-card theft, etc.

In addition, ISDEF takes it upon itself to organize and support active forums, where one may obtain advice or discuss topical issues with other members of the association.

ISDEF enjoys **substantial discounts** with many organizations providing essential services for software producers, such as the composing and distribution of press-releases, design, advertising, etc. Many ISDEF members themselves offer their software products and services free to other members. In addition, ISDEF members receive a large discount when registering for ISDEF events (conferences, seminars, etc).

The association represents the interests of its members before other important players in the international e-commerce market: major software archives (Tucows, Download.com, and others) and registration services (RegNow, ShareIt!, etc). The majority of key services provide ISDEF members with additional benefits (priority support, discounts). Plus, association members have the ability to do – actively influence the direction of development of these services.
ISDEF organizes consultations with legal, economic and technical experts for its members.

The association carries out testing and certification of the software products of its members. Such certification confirms the high quality of a product and plays a significant role in the product's positive evaluation by reviewers from software archives and computing publications.

This professional alliance of software developers possesses the ability to engage in **legal dialogue with government organizations**, resulting in the passing of legislation that is favourable to business.

Membership in ISDEF is an **indication of professionalism**, enabling a company to create a positive image for itself.

ISDEF news

02/01/2013

ISDEF Spring 2013

Independent Software Developers Forum announces ISDEF Spring 2013, the spring conference, will take place 18-22 April in Belgrad, Serbia. First time conference will take place outside CIS countries.

08/23/2012

ISDEF 2012, the 11th annual fall conference

ISDEF 2012, the 11th annual fall conference organized by the Independent Software Developers Forum (ISDEF), will first time take place October 04 - October 07 at the Milan hotel in Moscow.

11/09/2011

ISDEF Beer party in Prague

The meeting will take place on May 18, 2012 in Prague.

11/09/2011

ISDEF Spring 2012 in St. Petersburg

The 8th Annual International Conference ISDEF Spring 2012 will be held in St. Petersburg.

08/17/2011

Registration for the conference is still open. New sections added.

Registration for ISDEF'2011 at the conference website is still open.

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EXHIBIT 2



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Our Team

Principals:

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[Galina Petrosian](#)

[Filipp Kofman](#)

[Roman Vayner](#)

Staff:

[Svetlana Dubograev](#)

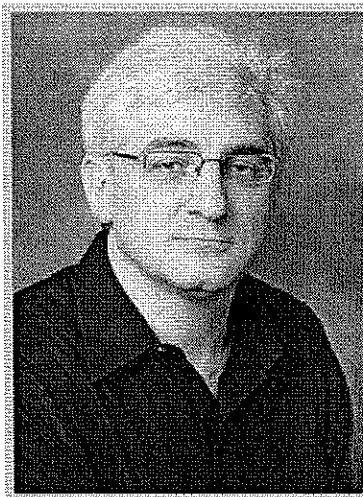
[Gregory Gurshman](#)

[Irina Cempa](#)

[Yaroslava Gouk](#)

Dmitri I. Dubograev

Founder, Managing Partner & CEO



Corporate structuring, M&A transactions, high-tech licensing agreements and intellectual property protection.

Dmitri I. Dubograev is a founder and the Managing Partner & CEO of the law firm femida.us (a/k/a Int'l Legal Counsel PC) in Alexandria, VA with affiliate offices in Washington, D.C., Paris and Moscow. He focuses on representation of clients in the information technology, software, finance, telecommunication, entertainment and sports industries in cross-border transactions, technology transfers, licensing and corporate structuring and financing.

Mr. Dubograev has extensive experience in practicing corporate and IP law with an emphasis on the legal aspects of start-up ventures, small and medium size high-tech businesses, mergers and acquisitions, corporate governance and technology licensing. He advised US and Eastern European companies with respect to complex issues relating to IT ventures in the United States, South America, Europe and Asia and the emerging markets' challenging regulatory environment. Mr. Dubograev assists numerous international clients, including IT, software, and e-commerce companies in their expansion and development in the Western markets. He also actively participates in various legal reforms and legal training programs in Eastern Europe under auspices of the US and multinational organizations. Mr.

Dubograev's practice regularly involves comparative review of legal regulations and drafting and negotiating legal documentation in English and Russian. His dual legal education (law degrees in the United States and the former Soviet Union), practical experience and multilingual capabilities significantly contribute to projects' effectiveness and efficiency to ensure seamless cross-border knowledge transfer between the civil law and common law environment and diverse cultures.

Prior to joining the firm, Mr. Dubograev was counsel in the corporate practice group of Akin, Gump, Strauss, Hauer & Feld, L.L.P. in Washington, D.C. and earlier, an associate at Hunton & Williams in Richmond, Virginia. Mr. Dubograev has negotiated and documented multiple transactions involving mergers and acquisitions, technology transactions, energy and telecommunication regulations, corporate financing and securities offerings. Mr. Dubograev, under the auspices of the World Bank and USAID sponsored projects, served as legal advisor and consultant to various government agencies of the former Soviet Union in connection with legal reforms projects. His responsibilities included practical training of private and government attorneys, comprehensive analysis and review of the existing legal framework and advice on the reformation of securities, corporate, property and investment legislation.

Mr. Dubograev has published several articles on corporate law issues, and he has been invited to give presentations at numerous conferences of the software industry. Mr. Dubograev received his degree in law with excellence from Belarusian State University in 1991 and his J.D. from Washington and Lee

University in 1994. He is admitted to the District of Columbia and Virginia Bars.

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